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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/606,790	06/28/2000	Bich Nguyen	2705-118	6318

20575 7590 10/05/2004

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EXAMINER

JACOBS, LASHONDA T

ART UNIT PAPER NUMBER

2157

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/606,790

Applicant(s)

NGUYEN ET AL.

Examiner

LaShonda T Jacobs

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

This Office Action is in response to Applicants' After Final filed on August 5, 2004. Claims 1-24 are presented for further examination.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Lechleider.

As per claim 1, Lechleider discloses a server for transmitting data over a network to client having a de-jitter buffer, the server comprising:

- a regular path for transmitting data received from a source at a regular rate (col. 2, lines 21-41 and col. 4, lines 12-19);
- a burst path for transmitting data received from the source at a burst rate higher than the regular rate (col. 2, lines 21-41, col. 4, lines 12-19 and lines 62-67);
- an initial burst transmit buffer in the burst path for buffering data from the source and for transmitting the buffered data to the client at the burst rate (col. 2, lines 21-41, col. 4, lines 12-19 and lines 62-67); and

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- a switch for selecting to transmit data from one of the regular path and the initial burst path (col. 4, lines 41-58).

As per claim 2, Lechleider discloses:

- a control unit for switching the switch (col. 4, lines 41-58).

As per claim 3, Lechleider discloses:

- a monitor that measures an amount of the data is output through the burst path, and wherein the control unit switches the switch when a preset measure of the data is output through the burst path (col. 8, lines 51-67 and col. 8, lines 1-17).

As per claim 4, Lechleider further discloses:

- a network bandwidth monitor (col. 8, lines 51-65); and
- a controller that controls a fill level of the initial burst transmit buffer according to the monitored bandwidth (col. 4, lines 41-58 and col. 8, lines 1-17).

As per claim 5, Lechleider discloses:

- a transcoder for transcoding the buffered streaming media output through the burst path (col. 9, lines 42-53).

As per claim 6, Lechleider discloses:

- a network bandwidth monitor (col. 8, lines 51-65); and
- a transcoder for transcoding the buffered streaming media output through the burst path if the monitored bandwidth becomes less than a preset bandwidth (col. 8, lines 1-17 and col. 9, lines 42-53).

As per claim 7, Lechleider discloses:

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- a receiving de-jitter buffer for receiving and playing out the streaming media, wherein the receiving de-jitter buffer has a changing fill level having a first threshold that initiates playout of the streaming media and that changes while playing out the streaming media to a second higher threshold (col. 9, lines 42-53 and col. 10, lines 3-13).

As per claim 8, Lechleider discloses:

- wherein the fill is increased gradually (col. 9, lines 18-37).

As per claims 9 and 15, Lechleider discloses a method for a server for retransmitting streaming media to a network comprising:

- means for receiving a first portion of the streaming media along a first path (col. 2, lines 21-41, col. 4, lines 12-19 and col. 9, lines 6-37);
- means for outputting the first portion to the network through the first path at a first rate (col. 2, lines 21-41, col. 4, lines 12-19 and col. 9, lines 6-37);
- means for receiving a second portion of the streaming media from the source along a second path distinct from the first path at least in part (col. 2, lines 21-41, col. 4, lines 12-19 and lines 42-64); and
- means for transmitting the second portion to the network through the second path at a second rate lower than the first rate (col. 2, lines 21-41, col. 4, lines 12-19 and lines 42-64).

As per claims 10 and 16, Lechleider discloses:

- means for switching to outputting from the second path, from outputting from the first path (col. 4, lines 41-58).

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As per claims **11**, Lechleider discloses:

- means for storing the first portion (col. 8, lines 19-29).

As per claims **12** and **18**, Lechleider discloses:

- means for monitoring a bandwidth of the network (col. 8, lines 51-65); and
- means for controlling a size of the first portion according to the monitored bandwidth (col. 8, lines 1-17 and col. 9, lines 42-53).

As per claims **13** and **19**, Lechleider discloses:

- means for transcoding the first portion (col. 8, lines 19-29).

As per claims **14** and **20**, Lechleider discloses:

- means for monitoring a bandwidth of the network (col. 8, lines 51-65); and
- means for transcoding the first portion if the monitored bandwidth becomes less than a preset bandwidth (col. 8, lines 1-17 and col. 9, lines 42-53).

As per claim **17**, Lechleider discloses:

- storing the first portion in an initial burst transmit buffer (col. 8, lines 19-29).

As per claims **21** and **22**, Lechleider discloses a method for a client to receive streaming media over a network, comprising:

- means for receiving data having the streaming encoded therein (col. 9, lines 42-53 and col. 10, lines 3-13).
- means for storing the received data in a de-jitter buffer thereby increasing a fullness of the buffer (col. 9, lines 42-53 and col. 10, lines 3-13);
- means for initiating play out of the stored data from the de-jitter buffer when the fullness reaches a fill level (col. 9, lines 42-53 and col. 10, lines 3-13); and

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- means for changing the fill level while playing out the stored data (col. 9, lines 42-53 and col. 10, lines 3-13).

As per claim 23, Lechleider discloses:

- wherein the fill is increased gradually (col. 9, lines 18-37).

As per claim 24, Lechleider discloses:

- play out is initiated before the fullness has reached a final level (col. 9, lines 42-53 and col. 10, lines 3-13).

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,704,281 to Hourunranta et al

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaShonda T Jacobs whose telephone number is 703-305-7494.

The examiner can normally be reached on 8:30 A.M.-5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 703-308-7562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LaShonda T Jacobs
Examiner
Art Unit 2157

ltj
September 28, 2004


ARIO ETIENNE
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